

STATE OF MICHIGAN
COURT OF APPEALS

In re CALLENDER-HALL, Minors.

UNPUBLISHED
May 24, 2016

No. 330252
Berrien Circuit Court
Family Division
LC No. 14-000070-NA

Before: O'BRIEN, P.J., and K. F. KELLY and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order terminating her parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(i) and (g). We affirm.

"To terminate parental rights, a trial court must find by clear and convincing evidence that at least one statutory ground under MCL 712A.19b(3) has been established." *In re Laster*, 303 Mich App 485, 491; 836 NW2d 182 (2013) (citation and internal quotation marks omitted). A trial court's findings in this regard are reviewed for clear error. *Id.* "A finding is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed[.]" *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (citation and internal quotation marks omitted). In this case, the trial court found that MCL 712A.19b(3)(c)(i) and (g) were established by clear and convincing evidence. And, while not challenged by respondent on appeal, we will briefly address those findings. Under MCL 712A.19b(3)(c)(i), a trial court may terminate a parent's parental rights if "182 or more days have elapsed since the issuance of an initial dispositional order" and "[t]he conditions that led to adjudicate continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." Under MCL 712A.19b(3)(g), a trial court may terminate a parent's parental rights if "[t]he parent, without regard to intent, fails to provide proper care and custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age."

Applying those statutory grounds to the case at bar, we are not left with a definite and firm conviction that a mistake has been made. With respect to MCL 712A.19b(3)(c)(i), the record reflects that more than 182 days elapsed between the entry of the initial dispositional order and the termination hearing. It likewise reflects that respondent failed to adequately address the conditions that led to adjudication, and that those conditions, primarily her substance abuse, continued to exist with no reasonable likelihood that they would be addressed or rectified within a reasonable time given the children's ages. Thus, the trial court correctly found that

MCL 712A.19b(3)(c)(i) was established by clear and convincing evidence. Similarly, with respect to MCL 712A.19b(3)(g), the record also reflects that, again primarily due to her substance abuse, respondent failed to, continues failing to, and will continue to fail in the reasonable future to provide proper care and custody for the children. Thus, the trial court also correctly found that MCL 712A.19b(3)(g) was established by clear and convincing evidence. Indeed, respondent's inability to participate in and benefit from the services that were provided strongly support the trial court's decision as to each statutory ground. *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012). Accordingly, we are not left with a definite and firm conviction that a mistake has been made with respect to the trial court's statutory-grounds determination.

Respondent's argument on appeal focuses, instead, on whether termination of her parental rights to the minor children was in their best interests. She claims that it was not. We disagree.

"Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *In re Laster*, 303 Mich App at 496 (citations and internal quotation marks omitted). Like a trial court's decision regarding the statutory grounds, a trial court's decision regarding the children's best interests is also reviewed for clear error. *Id.*; MCR 3.977(K).

On appeal, respondent contends that the trial court's best-interests determination was erroneous in light of her bond with her children and her efforts toward addressing her substance abuse issue as well as other related issues. We disagree. As noted above, the record reflects that respondent did not successfully participate in or benefit from the substance-abuse and related services that were provided to her, and it is precisely those barriers that continue to inhibit her ability to parent the children. Additionally, rather than a close bond, the record reflects a "strained" relationship between respondent and the children. Furthermore, according to the record, the children, who were thriving in new environments after spending approximately 16 months in foster care, were in need of permanency, and it was their foster homes that was providing and would continue to provide the same into the future. Accordingly, in light of this evidence, we are not left with a definite and firm conviction that the trial court erred in its best-interests determination.

Relatedly, respondent argues on appeal that the trial court failed to adequately consider a guardianship with the children's maternal aunt as an alternative to the termination of her parental rights. We disagree. While a trial court may place a child with a guardian in lieu of terminating a parent's parental rights, MCL 712A.19a(7)(c), it is not required to do so, and it should not do so unless doing so is in the child's best interest. *In re COH*, 495 Mich 184, 204-208; 848 NW2d 107 (2014). In this case, the record reflects that a guardianship with the children's maternal aunt was considered; however, because the aunt would not allow Department of Health and Human Services personnel into her home to ensure that it was appropriate for the children, it was the Department's position that placing the children in such an unknown environment, especially when compared to the foster homes that they were thriving in, presented too great of a risk to the

children's well-being. The trial court, after hearing testimony in this regard, agreed. We find no error with respect to that determination.

Affirmed.

/s/ Colleen A. O'Brien

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood